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ALSTON & BIRD LLP

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Chad L. Thorson
Registration No. 55,675

Message:**OFFICIAL FILING**

Application No. 09/742,190
Filed December 22, 2000
Attorney Docket No. 042933/301932


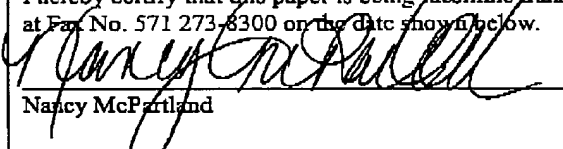
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CLT01/4745432v1

PRE-APPEAL BRIEF REQUEST FOR REVIEW (filed with the Notice of Appeal)		Docket Number 042933/301932
Application Number 09/742,190	Filed December 22, 2000	
First Named Inventor Timo Kinnunen		
Art Unit 2645	Examiner Hashem, Lisa	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>Respectfully submitted,</p> <p> Chad L. Thorson Registration No. 55,675</p> <p>Date <u>March 7, 2006</u></p> <p>Customer No. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Charlotte Office (704) 444-1000 Fax Charlotte Office (704) 444-1111</p>		
<p style="text-align: center;">CERTIFICATION OF FACSIMILE TRANSMISSION</p> <p>I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. 571 273-8300 on the date shown below.</p> <p> Nancy McParland</p> <p style="text-align: right;"><u>March 7, 2006</u> Date</p>		

Attachment
Reasons for Requesting Pre-Appeal Brief Request For Review

Claims 1, 2, 5-8, 10 and 12-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nielson (U.S. Patent No. 6,108,688) in view of Shanahan (U.S. Patent Application Publication No. 2004/0014459). Claims 9 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nielson and Shanahan and further in view of Jennings (U.S. Patent No. 5,781,186).

Independent claim 1 recites, *inter alia*, a means for selecting at least one of time, date, and location conditions under which the message may be opened by a device of a recipient and that a message header holds the at least one of time, date, and location conditions. In other words, in an exemplary embodiment according to claim 1, a message sender may define conditions for a device of the recipient to open the message via conditions disposed in the header of the message. For example, conditions under which the message may be opened inherently enable opening the message when the conditions are met, and prevent opening the message when the conditions are not met. It is respectfully submitted that none of the cited references, taken either individually or in combination, teach or suggest the above-listed features.

I. The cited references fail to teach or suggest conditions under which a message may be opened.

The final Office Action and Advisory Action each allege that Nielson discloses a means for selecting at least one of time, date, and location conditions under which the message may be opened by a device of a recipient at col. 2, lines 4-15, col. 3, lines 8-19, and col. 5, lines 44-46. This analysis is respectfully traversed. Nielson is directed to a system for warning a sender of email messages if the messages are not received. Accordingly, the sender of a message can designate that a warning should be issued to the sender if the message is not opened by the recipient prior to a certain time and date. There is no teaching or suggestion in Nielson of selecting any conditions under which the message may be opened by a device of a recipient as claimed in independent claim 1. Rather, the date and time specified in the field (30) of Figure 2, specify a time at which the message sender desires to be notified if the message has not been opened by the recipient (col. 4, lines 21-25 and Figure 2). Additionally, the second field (12) of Figure 1 designates a date and time by which the message must have been opened by the

recipient (col. 3, lines 49-51). It is clear from the context and disclosure of Nielson, that if the message is not opened by the recipient by the designated date and time, a warning may be sent to the sender (col. 3, lines 9-12 and 16-19). There is no teaching or suggestion in Nielson that the recipient must open the message by the designated date and time, or that opening the message is impossible after the designated date and time.

As to the passages specifically cited in the rejections, col. 2, lines 4-15, simply disclose that the sender of an email message may be provided with a reminder if the message is not received by the recipient prior to a selected time. Nowhere in the cited passage is it suggested that the recipient's ability to open the message is in any way effected or that any conditions under which the message may be opened are specified as recited in the claimed invention. Col. 3, lines 8-19 of Nielson further describe a specific embodiment in which a check box may be selected by the sender to implement warning of the sender if the message is not received by the recipient prior to a selected time. Thus, this cited passage also fails to teach or suggest any conditions under which the message may be opened as recited in the claimed invention. Finally, col. 5, lines 44-46 of Nielson merely describe a date and time field (73) which is set to a date and time specified by the sender in box (30) of FIG. 2. However, box (30), as stated above, is used to specify a time at which the message sender desires to be notified if the message has not been opened by the recipient (col. 4, lines 21-25 and Figure 2). Thus, box (30) does not specify conditions under which the message may be opened. Thus, this cited passage also completely fails to teach or suggest any conditions under which the message may be opened as recited in the claimed invention.

Accordingly, Nielson discloses, at best, conditions under which the sender is notified of an event and not conditions under which the message may be opened as claimed in the claimed invention. In fact, Nielson fails to teach or suggest any conditions that imply control over opening the message contents at the recipient's end. Rather, Nielson merely discloses **informing** the sender under specified circumstances and such informing is the extent of functionality associated with the time and date values inserted in the field (30). Thus, Nielson fails to teach or suggest a means for selecting at least one of time, date, and location conditions under which the message may be opened by a device of a recipient as claimed in independent claim 1.

The Advisory Action also states that Shanahan discloses a means for selecting at least one of time, date, and location conditions under which the message may be opened by a device of a recipient. Specifically, the final Office Action asserted that Shanahan disclosed such feature at paragraphs [0045] and [0057]. Meanwhile, the Advisory Action asserts that Shanahan discloses such feature at lines 1-23 of paragraph [0044]. Shanahan is directed to an apparatus that allows a user to program user defined information into a programmable electronic device or send signature information to another device along with or prior to a call. Thus, the user may select an audio or video file, for example, from an internet site, and download the file to their electronic device. As described in paragraph [0045] of Shanahan, the user may program certain audio or video files into their device that are activated when a certain person calls or at a certain date or time. Accordingly, for example, the user may identify a certain signature file to be played in response to receiving a characteristic indicative of the caller. Additionally, in paragraph [0058] of Shanahan, audio or video files may be downloaded through the telephone and stored. The stored files may then be played when receiving an incoming call as described above. In another embodiment, as cited in paragraph [0044], Shanahan discloses that a signature feature may be sent along with or prior to a call being placed to a receiver of the call. Thus, for example, the audio file may replace the "ring sequence" of the receiving device when an incoming call is received from the sender so that the sender may be identified by the receiver. However, neither of the cited passages, in particular, nor any other passage in Shanahan teaches or suggests selecting conditions under which the message may be opened by a device of a recipient as claimed in the claimed invention. Furthermore, the only date and time conditions disclosed by Shanahan are related to the date and time at which the user may select to play pre-selected audio or video files at the user's own device.

Accordingly, Shanahan's disclosure does not amount to selecting conditions under which the message may be opened by a device of a recipient as claimed in the claimed invention. To the contrary, if anything, Shanahan's disclosure amounts to selecting conditions under which a stored file may be opened by a device. Thus, the files which are played subject to a condition in Shanahan do not constitute a message received by the user. Since the files that are played in Shanahan are not transmitted to a recipient in a message, Shanahan does not teach or suggest means for selecting conditions under which the message may be opened by the device of a recipient. In fact, there is no teaching or suggestion that the user might send the file to a

recipient with conditions under which the recipient can open the file. Rather, the user plays the files from a memory of the user's device in response to user defined criteria. In the only instance in which the user sends an audio or video file to another person, there is no selection of time, date and location conditions under which the message may be opened by a device of a recipient as claimed in the claimed invention. Rather the file is automatically opened when received either at the time of or just before the call. Accordingly, Shanahan fails to teach or suggest a means for selecting at least one of time, date, and location conditions under which the message may be opened by a device of a recipient as claimed in independent claim 1.

Jennings is not cited as teaching such feature and similarly fails to teach or suggest a means for selecting at least one of time, date, and location conditions under which the message may be opened by a device of a recipient as claimed in independent claim 1.

Since Nielson, Shanahan and Jennings each fail to teach or suggest a means for selecting at least one of time, date, and location conditions under which the message may be opened by a device of a recipient as claimed in independent claim 1, any combination of the cited references likewise fails to render independent claim 1 obvious for at least the same reasons described above. Claims 2 and 5-14 depend either directly or indirectly from independent claim 1, and thus include all the recitations of independent claim 1. Therefore, dependent claims 2 and 5-14 are patentable for at least those reasons given above for independent claim 1.

Accordingly, for all the reasons stated above, Applicant respectfully submits that the rejections of claims 1, 2 and 5-14 should be reversed.

II. The cited references fail to teach or suggest that conditions under which a message may be opened are contained in the message header.

Additionally, it is submitted that none of the cited references teach that conditions under which the message may be opened are contained in the message header, as claimed in independent claim 1. Jennings indicates that the message component (204, 205) is inside the message (200) (Abstract and Figure 2). Shanahan does not involve messages, and therefore is silent as to the contents of a message header. Finally, Nielson discloses a message header, but fails to teach or suggest that the contents of the header include conditions under which the message may be opened.

The Advisory Action states that Nielson clearly discloses a message header (FIG. 4,

element (73)) that holds the at least one of time, date, and location conditions under which the message may be opened, citing col. 5, lines 44-46 of Nielson. However, as stated above, col. 5, lines 44-46 of Nielson only disclose the date and time field (73) which is set to a date and time specified by the sender in box (30) of FIG. 2. However, box (30), as stated above, is used to specify a time at which the message sender desires to be notified if the message has not been opened by the recipient (col. 4, lines 21-25 and Figure 2). Thus, box (30) does not specify conditions under which the message may be opened. Thus, no matter where the date and time field (73) is located (i.e., whether in a header or not) the date and time field would not disclose a condition under which the message may be opened. Since no other teaching or suggestion is provided, either in the cited passages of Nielson or elsewhere, Nielson fails to teach or suggest that a message header holds the at least one of time, date and location conditions as claimed in independent claim 1.

Since Nielson, Shanahan and Jennings each fail to teach or suggest that a message header holds the at least one of time, date, and location conditions as claimed in independent claim 1, any combination of the cited references likewise fails to render independent claim 1 obvious for at least the same reasons described above. Claims 2 and 5-14 depend either directly or indirectly from independent claim 1, and thus include all the recitations of independent claim 1. Therefore, dependent claims 2 and 5-14 are patentable for at least those reasons given above for independent claim 1.

Accordingly, for all the reasons stated above, Applicant respectfully submits that the rejections of claims 1, 2 and 5-14 should be reversed.